




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUN - 7 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

FROM: Kevin S. Minoli 
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: Anna J. Wildeman
Deputy Assistant Administrator
Office of Water

As the Deputy Assistant Administrator for Water of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as Director of the Environmental Protection Unit of the Wisconsin Department of Justice.

As an Administratively Determined (AD) appointment, you are not required to sign President Trump's Ethics Pledge because this type of appointment falls outside the definition of "appointee" set forth at Executive Order 13770 at Section 2(b).¹ However, what remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Deputy Assistant Administrator, you will have a "covered relationship" with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Justice, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Wisconsin is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

¹ See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As the Deputy Assistant Administrator, you serve as a key advisor to the Assistant Administrator in certain key aspects under his purview. As part of the Office of Water's senior leadership team, your area of responsibility includes major rulemakings, research strategies and program initiatives. You will be expected to communicate freely with the states, including Wisconsin, and may be asked to participate in discussions and meetings related to particular matters that affect the State. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Deputy Assistant Administrator in particular matters that involve the State of Wisconsin with the following limitation: you must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with the Wisconsin Department of Justice. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2016, you have served as an Assistant Attorney General and the Director of the Environment Protection Unit of the Wisconsin Department of Justice. In this role, you prosecuted violations of Wisconsin's environmental and natural resources laws, defended administrative decisions and rules issued by the Wisconsin Department of Natural Resources, and managed the Environment Protection Unit. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Wisconsin Department of Justice. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined contribution plan with the State of Wisconsin but are not vested in its defined benefit plan. You

do not, therefore, have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – As Deputy Assistant Administrator, you are expected to communicate freely with states, including Wisconsin.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Justice that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Deputy Assistant Administrator in such matters will be of importance to the Assistant Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Justice. You do not anticipate that any particular matter involving Wisconsin as a specific party in which you previously participated personally and substantially will arise at EPA, but if it should, then we have advised and you have agreed not to participate in it at all for the duration of your EPA tenure. If, however the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you or your Assistant Administrator may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis and consistent with your applicable bar rules. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated.

While I have issued you this determination to interact with the State of Wisconsin with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Wisconsin. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Dennis Lee Forsgren, Jr., Deputy Assistant Administrator
Benita Best-Wong, Acting Deputy Assistant Administrator
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

MAY 11 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Texas

FROM: Kevin S. Minoli *KSM*
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: Erin E. Chancellor
~~Counsel to the Administrator~~ *Senior Counsel
to the Assistant Administrator
for Land and Emergency Management*

As Senior Counsel to the Assistant Administrator for Land and Emergency Management in the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Texas. Within the last year, prior to being selected for this position, you served as Special Counsel to the Chairman for the Texas Commission on Environmental Quality (TCEQ).

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Texas employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Texas.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." In your EPA position, you have a "covered relationship" with the State of Texas pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from TCEQ, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Texas is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

question your impartiality. See 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality and I am authorizing you to participate as Senior Counsel to the Assistant Administrator in particular matters that involve the State of Texas with the following limitation: you must recuse yourself from participation in EPA specific party matters if you participated personally and substantially in the same specific party matters while employed with TCEQ. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – You started working at TCEQ in July 2014 as a Staff Attorney and became Special Counsel to the Chairman in December 2015. In this role as Special Counsel, you were the primary legal and policy advisor to the Chairman of TCEQ. You provided counsel on state and federal litigation involving TCEQ, aided in the development of agency policy, and advised on agency agenda items. You also served as a liaison between the Chairman, EPA Region 6, and the Environmental Council of the States, as well as the Governor's office, various state and federal elected officials, industry, TCEQ staff, environmental NGOs, and the International Boundary and Water Commission. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for TCEQ. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you are not vested in the defined benefit plan with the State of Texas. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – As Senior Counsel to the Assistant Administrator, you serve as a key advisor to that person in all aspects under his purview. In this role, you are also expected to communicate freely with states, including Texas.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for TCEQ that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Senior Counsel to the Assistant Administrator in such matters will be of importance to him and therefore to the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Texas, but not on the very same specific party matters on which you worked on personally and substantially while employed by TCEQ. With respect to those particular matters involving Texas as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern. You are also cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides informed consent and you notify OGC/Ethics.

While I have issued you this determination to interact with the State of Texas with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Texas. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Barry Breen, Acting Assistant Administrator
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MAR 19 2019

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Wisconsin

FROM: Justina Fugh *Justina Fugh*
Alternate Designated Agency Ethics Official

TO: Jessica Kramer
Policy Counsel to the Assistant Administrator, Office of Water

As Policy Counsel to the Assistant Administrator in the Office of Water of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Wisconsin. Within the last year, prior to being selected for this position, you served as an Assistant Attorney General in the Environmental Protection Unit of the Wisconsin Department of Justice.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore the Ethics Pledge does not apply to your State of Wisconsin employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Wisconsin.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Policy Counsel, you have a "covered relationship" with the State of Wisconsin pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Wisconsin Department of Justice, absent an impartiality determination from me, you cannot participate in

¹ See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/17) and "Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/10); and "Signing the Ethics Pledge," DO-090-005 (2/10/09).

any specific party matter in which the State of Wisconsin is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Policy Counsel in particular matters that involve the State of Wisconsin with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with the Wisconsin Department of Justice. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since August 2017, you have served as an Assistant Attorney General in the Environmental Protection Unit of the Wisconsin Department of Justice. In this role, you represented the Wisconsin Department of Natural Resources (DNR) in various environmental legal matters; prosecuted, defended and negotiated resolution of cases referred to the Attorney General by DNR; and provided legal consultation and/or advice to the Attorney General, agency clients, and DNR. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Wisconsin Department of Justice. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined contribution plan with the State of Wisconsin but are not vested in its defined benefit plan. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – The Office of Water frequently works with state and local governments to provide guidance, specify scientific methods and data collection requirements, perform oversight and facilitate communication. As Policy Counsel to the Assistant Administrator in the Office of Water, you are expected to communicate freely with states, including Wisconsin. In this role, you also serve as a key advisor to the Assistant Administrator in certain key aspects under his purview.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Wisconsin Department of Justice that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Policy Counsel in such matters will be of importance to the Assistant Administrator, and therefore in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Wisconsin, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Wisconsin Department of Justice. With respect to those particular matters involving Wisconsin as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you or your Assistant Administrator may ask OGC/Ethics to reconsider the factors on a case-by-case basis and consistent with your applicable bar rules. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you previously participated.

While I have issued you this determination to interact with the State of Wisconsin with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Wisconsin. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise. You are also cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: David Ross, Assistant Administrator
Dennis Lee Forsgren, Jr., Deputy Assistant Administrator
Anna Wildeman, Principal Deputy Assistant Administrator
Benita Best-Wong, Principal Deputy Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

AUG - 9 2018

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Matters Involving the State of Colorado and the Colorado Air Quality Control Commission

FROM: Kevin S. Minoli *KSQ*
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: Megan E. Garvey
Senior Counselor to the Regional Administrator
Region 8

As Senior Counselor to the Regional Administrator for Region 8 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Colorado and the Colorado Air Quality Control Commission (CAQCC). In June 2017, you were appointed by the Governor of Colorado to serve as a Commissioner with the CAQCC, which is a nine-member state commission that develops air pollution control policy, regulates pollution sources, and conducts hearings involving violations of the state's air pollution laws. You resigned from this uncompensated position on July 24, 2018.

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, Executive Order 13770 defines "former employer" to exclude state or local government entities.¹ Therefore, the Ethics Pledge does not apply to your former service with the CAQCC. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your service with the CAQCC, even though it was uncompensated and you were not actually an employee of the state. You did, however, serve as a Commissioner on a state board, so we will analyze your ethical obligations carefully.

The federal ethics rules addressing impartiality concerns are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

E, "Impartiality in Performing Official Duties." In your EPA position, you have a "covered relationship" with the CAQCC pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the CAQCC, absent an impartiality determination from me, you cannot participate in any specific party matter in which the CAQCC is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). In an abundance of caution, I am considering that your prior service with the CAQCC extends to the State of Colorado, and then analyzing this impartiality determination accordingly.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality and I am authorizing you to participate as Senior Counselor to the Regional Administrator in particular matters that involve the State of Colorado or the CAQCC with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while serving as a Commissioner with CAQCC. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – The CAQCC is a rulemaking commission established within the Colorado Department of Public Health & Environment pursuant to the Colorado Air Pollution Prevention and Control Act, Section 25-7-101 *et seq.*, C.R.S., as amended, and is authorized to oversee Colorado's air quality program. The primary role of the CAQCC is to adopt a cost-effective and efficient air quality management program that promotes clean and healthy air for Colorado's citizens and visitors, and protects Colorado's scenic and natural resources. The Commission is composed of nine citizen members to reflect a wide variety of professional backgrounds and individual interests. Colorado chose the citizen board approach to develop and oversee implementation of its air quality management program to ensure that the program is responsive to the public. In June 2017, you were appointed as a Commissioner with the CAQCC by Governor Hickenlooper. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the CAQCC. States and their various boards and commissions share responsibility with EPA in

protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated Colorado with regulatory and enforcement authority. In fact, EPA, through Region 8, works closely and directly with the State of Colorado on a continuing and frequent basis.

Effect of the matter upon your financial interest – Subject to your written recusal from specific matters affecting your reported financial interests, I find no connection between EPA matters in which Colorado is a party and your personal financial interests or those interests imputed to you under the financial and impartiality rules. See 18 U.S.C. § 208 and 5 C.F.R. § 2635.502.

Nature and importance of the employee's role – As Senior Counselor to the Regional Administrator in Region 8, your area of responsibility includes Colorado, as well as Montana, North Dakota, South Dakota, Utah, and Wyoming. In this role as Senior Counselor, you serve as a key advisor to the Regional Administrator in all aspects under his purview. You are also expected to communicate freely with states in your region, including Colorado.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the State of Colorado or the CAQCC that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in matters involving Colorado or the CAQCC as Senior Counselor, and your particular expertise and experience, will be of importance to the Regional Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in specific party matters that involve the State of Colorado or the CAQCC, but not on the very same specific party matters on which you worked personally and substantially while serving as a Commissioner with the CAQCC. With respect to those particular matters involving the CAQCC as a specific party or in which you previously participated personally and substantially, you have voluntarily agreed not to participate at all for the duration of your EPA tenure. However, if the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern. You are also cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your former client provides informed consent pursuant to your bar rules, and you notify OGC/Ethics.

While I have issued you this determination to interact with the State of Colorado and the CAQCC with the limitations described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves the CAQCC. Nothing in this impartiality determination precludes you from making additional adjustments to

your duties, such as voluntarily recusing from other matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or the Region 8 ethics team.

cc: Douglas H. Benevento, Regional Administrator, Region 8
Debra H. Thomas, Deputy Regional Administrator, Region 8
Kenneth C. Schefski, Regional Counsel, Region 8
Elyana Sutin, Deputy Regional Counsel, Region 8
Michael Gleason, Regional Ethics Counsel, Region 8
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

SEP 14 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Texas

FROM: Kevin S. Minoli *K SQ.*
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: Erin E. Chancellor
Chief of Staff-designee
Region 6

For your position as the Chief of Staff for Region 6 of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Texas. Within the last year, prior to being selected for this position, you served as Special Counsel to the Chairman for the Texas Commission on Environmental Quality (TCEQ).

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Texas employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Texas.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." In your EPA position, you have a "covered relationship" with the State of Texas pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from TCEQ, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Texas is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality and I am authorizing you to participate as Chief of Staff in particular matters that involve the State of Texas with the following limitation: you must recuse yourself from participation in specific party matters if you participated personally and substantially in the same specific party matters while employed with TCEQ. That said, I understand that the TCEQ General Law Division has made the determination that "there is not a specified matter related to your [EPA] representation that is substantially related to a matter you handled while at the TCEQ."

In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – You started working at TCEQ in July 2014 as a Staff Attorney and became Special Counsel to the Chairman in December 2015. In this role as Special Counsel, you were the primary legal and policy advisor to the Chairman of TCEQ. You provided counsel on state and federal litigation involving TCEQ, aided in the development of agency policy, and advised on agency agenda items. You also served as a liaison between the Chairman, EPA Region 6, and the Environmental Council of the States, as well as the Governor's office, various state and federal elected officials, industry, TCEQ staff, environmental NGOs, and the International Boundary and Water Commission. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for TCEQ. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you are not vested in the defined benefit plan with the State of Texas. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – As Chief of Staff for Region 6, you will serve as a key advisor to the Regional Administrator in all aspects under her purview. As part of the Region's leadership team, Texas will constitute a significant portion of your portfolio since your area of responsibility covers Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. In your role as Chief of Staff, you will be expected to communicate freely with the states in your region, including Texas.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for TCEQ that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Chief of Staff in such matters will be of importance to the Regional Administrator, and therefore, in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Texas, but we remind you not to participate in the very same specific party matters on which you worked on personally and substantially while employed by TCEQ, should one arise. With respect to those particular matters involving Texas as a specific party and in which you previously participated personally and substantially, you agreed not to participate in them at all for the duration of your EPA tenure. If, however, the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you, your Regional Administrator or Regional Counsel may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern. You are also cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same as or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides informed consent and you notify OGC/Ethics.

While I have issued you this determination to interact with the State of Texas with the limitation described above, please note that you have additional ethical obligations that arise from your outside activity with the State Bar of Texas' Environmental & Natural Resources Law Section. Thus, this determination does not authorize you to interact with the State Bar of Texas as part of your official EPA duties. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other

matters, although you are advised to confer with your Regional Counsel should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786, or your regional ethics team.

cc: Anne Idsal, Regional Administrator, Region 6
David Gray, Acting Deputy Regional Administrator, Region 6
Ben Harrison, Acting Regional Counsel, Region 6
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

JAN 11 2018

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Litigation Related to the TSCA Risk Evaluation Rule, TSCA Prioritization Rule, and TSCA Inventory Notification (Active-Inactive) Rule

FROM: Kevin S. Minoli *KSO*
Designated Agency Ethics Official and
Principal Deputy General Counsel

TO: Nancy Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention

Effective April 30, 2017, you joined the United States Environmental Protection Agency (EPA) in an Administratively Determined (AD) position as the Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP). Prior to your selection, you served as the Senior Director of Regulatory Science Policy at the American Chemistry Council (ACC).

Upon joining EPA, you appropriately consulted with the Office of General Counsel's ethics office (OGC/Ethics) regarding your ethics obligations and have adhered to our advice. As an AD appointee, you understand that you are subject to the federal conflict of interest statutes and the Standards of Ethics Conduct for Employees of the Executive Branch, but you are not required to sign President Trump's ethics pledge set forth at Executive Order 13770.¹ You were advised by OGC/Ethics that you have a "covered relationship" with your former employer pursuant to the federal impartiality standards, and you cannot participate in any specific party matter involving ACC absent approval from OGC/Ethics. This recusal period is in effect until April 21, 2018.

¹ This type of appointment falls outside the definition of "appointment" set forth at Executive Order 13770 at Section 2(b). See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (March 20, 2017) and "Executive Order 13770," LA-17-02 (February 6, 2017), which apply to the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (March 16, 2009); and "Signing the Ethics Pledge," DO-09-005 (February 10, 2009).

OGC/Ethics has advised you consistently that you may participate in particular matters of general applicability, including rulemakings, even if the interests of your former employer may be affected by the rule. On June 8, 2017, I issued an impartiality determination authorizing you to attend meetings at which ACC is present or represented, provided that the subject matter of the meeting is a matter of general applicability, other interested non-federal parties are present, and other EPA officials are also in attendance. Consistent with this advice, as Deputy Assistant Administrator for OCSPP you have worked on a wide range of matters as authorized by the federal ethics rules and OGC/Ethics, including the development and promulgation of final agency actions and regulations under TSCA.

Some of the final agency actions and regulations you helped EPA issue were challenged in court. Initially, consistent with the ethics requirements and advice from OGC/Ethics, you assisted in the Agency's defense and litigation efforts in these cases. When the agency was notified that your former employer, ACC had intervened in these lawsuits, you ceased your involvement and sought further ethics advice. We indicated that unless you received an impartiality determination from me, the federal impartiality standards would prohibit you from continuing your work on these specific party matters.

You now request a determination as to whether you may, as part of your official duties, participate personally and substantially in the following litigation where you participated in the promulgation of the final rule while at EPA the ACC has either intervened or filed a motion to intervene:

| Case Name | Citation | TSCA Rule |
|---|---|---|
| Alliance of Nurses for Healthy Environments, <i>et al.</i> v. EPA; Environmental Defense Fund v. EPA | No. 17-1926 (4th Cir.) No. 17-2464 | Risk Evaluation Rule |
| Alliance of Nurses for Healthy Environments, <i>et al.</i> v. EPA | No. 17-1927 (4th Cir.) | Prioritization Rule |
| Safer Chemicals Healthy Families, <i>et al.</i> v. EPA | No. 17-72259 (9th Cir.) | Risk Evaluation Rule |
| Safer Chemicals Healthy Families, <i>et al.</i> v. EPA; Environmental Defense Fund v. EPA | No. 17-72260 (9th Cir.) No. 17-72501 | Prioritization Rule |
| Environmental Defense Fund v. EPA | No. 17-1201 (D.C. Cir.) | Inventory Notification (Active-Inactive) Rule |

You do not have any financial conflict of interest with your former employer, so the applicable ethics rules are set forth in the Standards of Ethical Conduct for Executive Branch employees, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Pursuant to 5 C.F.R. § 2635.502(b)(1)(iv), you have a "covered relationship" with ACC

as your former employer. As explained above, for one year from the time you resigned from ACC, absent an impartiality determination from me, you cannot participate in any specific party matter in which ACC is a party or represents a party if that matter is likely to have a direct and predictable effect upon ACC or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have decided to allow you to participate fully in these specific party matters. In making this determination, I have taken the following factors into consideration:

- The nature of your relationship with ACC as your former employer but with whom you do not have any financial conflict of interest, as described more fully above, and that the resolution of the litigation is not expected to have an effect on the financial interest of ACC.
- As the Deputy Assistant Administrator for OCSPP, you are responsible for advising the Administrator in matters pertaining to chemical safety, pollution prevention, pesticides and toxic substances, including the development and implementation of rulemakings under federal statutes. Although your type of appointment is not a political one, you currently serve in the only non-career position in OCSPP. As such, you must be able to effectively carry out your role in advising senior agency officials, including the Administrator.
- In your capacity as the Deputy Assistant Administrator for OCSPP, you worked on the TSCA Risk Evaluation Rule, TSCA Prioritization Rule, and TSCA Inventory Notification (Active-Inactive) Rule. As part of your official EPA duties, you were authorized to participate in developing these rules. Your expertise, skill, and experience (including your experience working on these regulations while at the EPA) are needed to

enhance the Agency's litigation efforts and to ensure that you are effectively advising the Administrator, the General Counsel, and career staff.

- All of these specific party matters originated after you left ACC.
- While you still participate in an ACC defined contribution plan, neither you nor your former employer continues to make contributions. Pursuant to federal ethics regulations, this type of employee benefit plan does not present any financial conflict of interest. *See* 5 C.F.R. § 2640.201(c).

After considering the relevant facts of the situation consistent with the factors identified in the federal ethics regulations, I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality and I am authorizing you to participate as Deputy Assistant Administrator in the litigation identified above. This determination will remain in effect for the remainder of your cooling off period, which expires later this year. After April 21, 2018, you will no longer have a covered relationship with ACC under the impartiality standards and will no longer require this determination.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

cc: Louise P. Wise, Deputy Assistant Administrator
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

JUN - 8 2017

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Participation in Specific Party Matters Involving Your Former Employer, the American Chemistry Council

FROM: Kevin S. Minoli *KSM*
Designated Agency Ethics Official and
Acting General Counsel

TO: Nancy Beck, Ph.D., DABT
Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention

Effective April 30, 2017, you joined the United States Environmental Protection Agency (EPA) in an Administratively Determined (AD) position as the Deputy Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP). In this position, you are responsible for advising the Acting Assistant Administrator in matters pertaining to chemical safety, pollution prevention, pesticides and toxic substances, including implementation of rulemaking under applicable federal statutes. Previous to your selection, you served as the Senior Director of Regulatory Science Policy at the American Chemistry Council (ACC), which represents companies that are directly regulated by EPA. You seek permission to participate in specific party matters involving your former employer.

In providing my advice, I have taken into consideration the fact that, as an AD appointment, you are not required to sign the Trump ethics pledge because this type of appointment falls outside the definition of "appointee" set forth at Executive Order 13,770 at Section 2(b).¹ You do not have any financial conflict of interest with your former employer, so the ethics rules to be applied to you are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Pursuant to 5 C.F.R. § 2635.502(b)(1)(iv), you have a "covered relationship" with ACC as your former employer. For one year from the time you resigned from ACC, absent an impartiality determination from me, you cannot participate in any specific party matter in which ACC is a party or represents a party if that matter is likely to have a direct and predictable financial effect upon the ACC or if the circumstances would cause a reasonable

¹ See Office of Government Ethics advisories entitled "Guidance on Executive Order 13770," LA-17-03 (3/20/27) and Executive Order 13770," LA-17-02 (2/6/17), which apply the following OGE advisories from the last administration in full: "Who Must Sign the Ethics Pledge?" DO-09-010 (3/16/09); and "Signing the Ethics Pledge," DO-09-005 (2/10/09).

person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

It is important to note that the ethical restriction applies only to particular matters involving specific parties, not to particular matters of general applicability. Generally speaking, a "specific party" matter is a "proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties." *See* 5 C.F.R. § 2640.102(l). Rulemaking is not usually a "specific party" matter but rather a matter of general applicability, which involves "deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons." *See* 5 C.F.R. § 2640.103(a)(1). Therefore, under the ethics regulations, you may participate in rulemaking, even if that rulemaking may affect the members of your former employer. While you can ethically work on rulemaking in general, you have been advised -- and understand -- that you cannot participate in any meetings, discussions or decisions that relate to any individual ACC comment nor attend any meeting at which ACC is present.

As provided by the ethics regulations, however, federal ethics officials can nonetheless permit employees to participate in matters that might raise impartiality concerns when the interest of the federal government in that employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." *See* 5 C.F.R. § 2635.502(d). The factors that we can take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have decided to allow you to participate fully in matters of general applicability, including rulemaking, including consideration of any comments that were made by ACC. In making this determination, I have taken the following factors into consideration:

- While at ACC, you served as the Senior Director of Regulatory Science Policy and worked extensively on risk assessment, science policy and rulemaking issues;
- As ACC's leading expert for ensuring sound implementation of risk assessment practices in the Frank R. Lautenberg Chemical Safety for the 21st Century Act, you have valuable expertise to share as the Agency considers how to implement this new statute;
- You have extensive prior expertise with the regulated industry's perspective and are already familiar with (and may well have authored) ACC comments now under consideration. Because your prior knowledge is inherently part of your expertise, it is impractical to excise that knowledge from how you carry out your Agency duties;

- While you still participate in an ACC defined contribution plan, neither you nor your former employer continues to make contributions. Pursuant to federal ethics regulations, this type of employee benefit plan does not present any financial conflict of interest. *See* 5 C.F.R. § 2640.201(c);
- Your unique expertise, knowledge and prior experience will ensure that the Agency is able to consider all perspectives, including that of the regulated industry's major trade association;
- Although your type of appointment at EPA is not a political one, you currently serve in the only non-career position in the Office of Chemical Safety and Pollution Prevention. As such, you have a unique role in advising political staff, including the Administrator, and need to be able to be able to consider as many perspectives as you can; and
- Participation in rulemaking matters is integral to your position, so the Agency has a strong and compelling interest in ensuring that you are able to advise the Administrator, the Acting Assistant Administrator and career staff to the maximum extent possible.

Under the federal ethics regulations, you are permitted to participate in matters of general applicability (such as rulemaking) even if individual members of your former employer will be affected by that particular matter. Until now, you have recused yourself from participating personally and substantially in those comments to rulemaking that were offered by ACC. This impartiality determination confirms that you are permitted to participate in any discussions or consideration of comments submitted by ACC to rulemaking or other matters of general applicability. You may also attend meetings at which ACC is present or represented, but only if the following conditions are met: (a) the subject matter of the discussion is a particular matter of general applicability, (b) other interested non-federal entities are present besides only ACC, and (c) you are not the only Agency official at the meeting. This authorization will remain in effect for the remainder of your cooling off period. After April 21, 2018, you will no longer have a covered relationship with ACC under the impartiality standards and will no longer require this determination. I am attaching a recusal statement for you to sign and issue to your staff.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Justina Fugh at fugh.justina@epa.gov or (202) 564-1786.

Attachment

cc: Wendy Cleland-Hamnett, Acting Assistant Administrator
Justina Fugh, Senior Counsel for Ethics



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OCT 4 5 2018

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Matters Involving the State of Michigan

FROM: David Cozad *David Cozad 10/25/18*
Designated Agency Ethics Official and
Acting Deputy General Counsel

TO: Nathaniel Zimmer
Senior Advisor, Office of International and Tribal Affairs

As Senior Advisor in the Office of International and Tribal Affairs (OITA) of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the State of Michigan. Within the last year, prior to being selected for this position, you served as Chief of Staff for the Michigan Department of Environmental Quality (DEQ).

Under President Trump's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."¹ Therefore, the Ethics Pledge does not apply to your State of Michigan employment. But since federal ethics rules do not contain a similar exclusion for state government, those rules do apply to your employment with the State of Michigan.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." In your EPA position, you have a "covered relationship" with the State of Michigan pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date you resigned from the Michigan DEQ, absent an impartiality determination from me, you cannot participate in any specific party matter in which the State of Michigan is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. See 5

¹ See Exec. Order 13770, Section 2(j), which provides that "'former employer' does not include ... State or local government."

C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

In reviewing these factors, I have concluded that the interest of the United States Government in your participation outweighs any concerns about your impartiality, and I am authorizing you to participate as Senior Advisor in particular matters that involve the State of Michigan with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with the Michigan DEQ. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – You started working at the Michigan DEQ as Chief of Staff in August 2017. In this role, you served as a member of the Executive Leadership Team, program manager for Michigan's PFAS Actions Response Team, and managed the Environmental Council of States' announcements and assignments. You also worked on various priority executive issues for the Director. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Michigan DEQ. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – I understand that you have a defined contribution plan with the State of Michigan. As such, you do not have a financial conflict of interest pursuant to 18 U.S.C. § 208.

Nature and importance of the employee's role – OITA leads EPA's international and tribal engagements, and works across EPA's programs and regions to develop and implement policy

and programs that protect U.S. public health and environment. Because pollution does not respect international boundaries, OITA frequently works with the EPA regions and States, as well as other federal agencies and international organizations, to address bilateral, regional and global environmental challenges. As Senior Advisor in OITA, you are expected to communicate freely with states, including Michigan. In this role, you also serve as a key advisor to Chad McIntosh in all aspects under his purview.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you did not participate personally and substantially for the Michigan DEQ that will rise to your level of attention, merit your participation and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as Senior Advisor in such matters will be of importance to OITA and Chad McIntosh and therefore to the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the State of Michigan, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Michigan DEQ. With respect to those particular matters involving Michigan as a specific party and in which you previously participated personally and substantially, you have agreed not to participate at all for the duration of your EPA tenure. If the Agency determines that we have a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

While I have issued you this determination to interact with the State of Michigan with the limitation described above, please note that you may wish to make adjustments to your duties to not participate in a particular matter that involves Michigan. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact Shannon Griffo at griffo.shannon@epa.gov or (202) 564-7061.

cc: William C. McIntosh, Senior Advisor to the Administrator
Jane Nishida, Principal Deputy Assistant Administrator
Justina Fugh, Director, Ethics Law Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100
BOSTON, MA 02109-3912

MEMORANDUM

Date: July 30, 2018

Subject: Impartiality Determination under 5 C.F.R. §2635.502(c) and (d)

From: Deborah A. Szaro *Deborah A. Szaro*
Deputy Regional Administrator and Region 1 Designated Ethics Official

To: Sean T. Dixon
Senior Policy Advisor to the Regional Administrator

I have been asked to make a determination under the Standards of Ethical Conduct concerning your involvement in an American Bar Association (ABA) planning committee. In particular, you are serving as a planning committee member for the March 2019 ABA Section of Environment Energy and Resources (SEER) Annual Conference on Environmental Law in Denver, Colorado.

You served on this committee before you were employed by EPA and would like to continue your involvement as an EPA representative. With the rest of the committee and ABA SEER, you are collaboratively planning the conference program and related events. For example, the committee is selecting conference session topics (e.g., developing session titles and descriptions), brainstorming about panel speakers (e.g., discussing ways to ensure the session meets the ABA's diversity goals), coordinating panels for the conference (e.g., ensuring speakers submit necessary CLE materials on time and have planned their talks before the conference date), and giving other planning input as needed (e.g., thoughts on potential keynote topics).

As the Senior Policy Advisor to the Regional Administrator, you work on a variety of high profile matters that align with EPA initiatives and the Agency's highest priorities. In addition to your involvement in important regional matters, you have frequent contact with senior staff at Headquarters and work to ensure that regional activities align with overall Agency priorities and policies. Before coming to EPA, you worked on a wide range of matters involving storm water control, habitat protection, fossil fuel advocacy, climate change adaptation, resiliency planning, urban water, Superfund remediation, and green infrastructure. You also have an extensive educational background in environmental law, climate change, marine biology, geology, and coastal zone resource management, and have served as an Adjunct Professor at Pace Law School.

At present, in your personal capacity, you serve as a co-chair of the ABA SEER awards committee and as the ABA SEER Membership and Diversity Officer. Your position as the Membership and Diversity Officer will end on August 5, 2018. You have written Agency approval to participate in both of these activities in your personal capacity.

You were advised by LeAnn Jensen, an ethics advisor in the Office of Regional Counsel, that your involvement in the ABA planning committee in your official capacity and your outside involvement in the ABA as an officer and chairperson could raise questions under the Standards of Ethical Conduct found at 5 C.F.R. Part 2635. In particular, Ms. Jensen advised you that because you have a covered relationship with the ABA, you should seek an impartiality determination pursuant to 5 C.F.R. § 2635.502 before you continue to engage in this activity as an EPA representative.

Section 2635.502(d) states that “[w]here an employee’s participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based upon a determination, made in light of all the relevant circumstances, that the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” The regulation lists the following six (6) factors:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties to reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

After careful consideration of these factors and in light of the relevant circumstances, I conclude that the government’s interest in your participation outweighs the concern that a reasonable person may question the integrity of the Agency’s programs and operations. EPA is the lead federal agency for the administration and enforcement of the nation’s environmental laws, and has an interest in ensuring that the environmental legal community is well and properly informed. As an EPA Senior Policy Advisor, you are involved in a wide variety of environmental issues, and have knowledge and insight into the Agency’s programs, policies, initiatives and current priorities at both the regional and national levels. As a result, you have unique insight into topics and presentations that will increase public awareness of EPA’s programs, policies, positions and priorities. In addition, your extensive background in

environmental law, both as a law school professor and practitioner, also informs your participation in the committee. Accordingly, you are an ideal person to serve as an EPA representative on the conference planning committee. In addition, it would be difficult for the Agency to find another person who can represent EPA on the committee at this late stage of the planning process with a comparable level of experience and expertise.

Also, steps have been taken to ensure that your duties in connection with this work will not raise concerns about your impartiality. In particular, you are one of several members of this committee representing a wide range of environmental organizations. You do not run or control this committee or its decision making, and your voice is only one of many representing a wide range of interests. You will not be involved in any decision making about conference budgets. Similarly, you will not be involved in any personnel decisions that affects or concerns the ABA, because the hiring and firing of personnel is not within the parameters of the committee's work. Moreover, this position does not include any fiduciary responsibilities, and you will not be involved in decisions that could affect the financial interests of the ABA, such as decisions concerning the conference site and/or associated conference costs such as hotel block costs and registration fees. In addition, the information discussed with the committee will involve non-sensitive, public matters of general applicability that should be included in the conference program to better inform environmental legal practitioners and the general public.

In addition, you have reviewed and agreed to abide by EPA Ethics Advisory 97-12, Participation in and Cooperation with Outside Organizations. In accordance with this Advisory, you understand and have agreed that you will serve as a non-voting, non-managerial EPA representative, and you will notify ABA SEER and the planning committee members that you are serving as an EPA representative and not as an individual or on behalf of the ABA. In addition, any public information about your official relationship with the outside organization (such as pamphlets and stationery) will make clear that you are serving as an EPA representative and not on behalf of the ABA.

I conclude that a determination pursuant to 5 C.F.R. §2635.502(d) authorizing you to continue your work as a member of the ABA SEER conference planning committee is appropriate, because the interests of the government outweigh the concern that a reasonable person may question your impartiality. Should any of the facts relied upon in this determination change, please consult me for additional advice and guidance.

If you need additional information concerning this determination or the Standards of Ethical Conduct, please contact LeAnn Jensen at (617) 918-1072.

cc: Alexandra Dapolito Dunn, Regional Administrator